












Equality Principle in Designing Taxation International Digital Transactions: A Case Study of ASEAN

I Nyoman Darmayasa¹ , Rani Diana Binti Othman² ,
Vani Tanggamani³ , Nyoman Sentosa Hardika⁴ ,
Jeni Susanti⁵ , Ni Putu Maha Lina⁶ ,
Ni Luh Putri Setyastrini⁷ , I Made Adhi Wirayana⁸ ,
and Made Andy Pradana Sukarta⁹ 

^{1,4,5,6,7,8,9} Politeknik Negeri Bali, Kampus Bukit Jimbaran, Bali, Indonesia

^{2,3} Faculty of Accountancy, Universiti Teknologi MARA, Cawangan Melaka, Malaysia
nyomandarmayasa@pnb.ac.id

Abstract. This study aims to design a taxation scheme for international digital transactions in the ASEAN countries. This study uses a qualitative approach through content analysis of words related to the taxation rights of a source country on income from international digital transactions. The content analysis approach found that the term physical presence as a condition for determining a permanent establishment as a tax subject does not fully fulfill the principle of equality for income source countries. Indonesia and Malaysia, which have high corporate tax rates, must consider implementing Global Anti-Base Erosion (GloBE). Active involvement in the anti-based erosion shifting (BEPS) consensus could reflect the policy direction towards realizing the equality principle. This study contributes to both the equality principal tax treaty between domicile and source-country partners. Practically, it can be an alternative to ratifying tax treaty ASEAN countries with potential sources in Indonesia, and Malaysia with tax domicile in contracting country partners.

Keywords: BEPS, Equality Principal, GloBE, International Digital Transactions, Permanent Establishment

1 Introduction

Indonesia and Malaysia are in the ASEAN region, with the same characteristics as the source countries for international digital transaction income. Taxation rights for cross-border digital transactions are a concern for the Organization for Economic Cooperation and Development (OECD) (OECD, 2015; OECD, 2019). Interestingly, the source country feels that the equality aspect has not been implemented comprehensively in accordance with the four maxims principle of taxation policy (Rinaningsih, 2020; Susilawati et al., 2021).

Philosophically, tax collection is based on at least four basic principles: equality, equity, certainty, and economic collection (Manioudis & Milonakis, 2021; Rahim, 2018). The Fulfillment of the equality aspect can be seen from the determination of the tax subject of an entity related to traditional-based transactions and digital-based

© The Author(s) 2024

A. A. N. G. Saptaka et al. (eds.), *Proceedings of the International Conference on Sustainable Green Tourism Applied Science - Social Applied Science 2024 (ICoSTAS-SAS 2024)*,

Advances in Economics, Business and Management Research 308,

https://doi.org/10.2991/978-94-6463-622-2_77

transactions that are ideally treated the same. The difference occurs in the initial determination of a tax subject in a jurisdiction. Determination of the tax subject refers to the tax treaty related to the determination of a Permanent Establishment (PE) (Cahyadi et al., 2021; Cahyadi et al., 2023; Darmayasa & Partika, 2024; Polezharova & Krasnobaeva, 2020; Ponomareva, 2022).

The preparation of tax treaties is influenced by two approaches: the United Nations (UN) and OECD models. The UN model, the main taxing right, is intended for the country of source of income, while the OECD model is intended for the country of domicile (Darmayasa & Partika, 2024; Geringer, 2021; Murthy & Bhasin, 2015; Turina, 2020). The preparation of the Indonesian or Malaysian tax treaty is adjusted to the other contracting state, using either the UN or OECD model. Under the condition of a tax treaty using the OECD model with the country of the capital owner where an entity is domiciled, the main taxation rights are in the country of domicile (Apriliasari, 2022; Mann, 2023; Surono & Apriliasari, 2022; Turina, 2020). Referring to the text in the tax treaty, using content analysis, it is shown that the determination of a PE is influenced by the guidelines issued by the OECD, so that the principle of equality is realized between the source country and the country of domicile (Oberoi & Drishty De, 2021; Ziemele et al., 2022).

Based on the rapid growth of cross-border transactions and the unfulfilled principle of equality in the taxation rights of the source country compared to the country of domicile, research is urgently needed. This study aims to apply the principle of equality to the taxation policy of international digital transactions in ASEAN countries, especially Indonesia and Malaysia. Given that the determination of taxation rights begins with the determination of a PE, the most relevant approach is content analysis in the policy of determining a PE.

2 Methodology

The qualitative approach is the most appropriate to apply the principle of equality to international digital transaction taxation policies in Indonesia and Malaysia. The data come from primary data in the form of research participants' views and secondary data in the form of OECD policies related to digital transaction taxation and the Indonesia and Malaysia Tax Treaty. The participants in this study were academics and practitioners in the field of OECD-based international digital transaction taxation. Interviews were conducted by sending a list of questions in the main part, conducting face-to-face interviews, and by sending short messages in the form of voice notes. The quality of the primary data in the form of interview manuscripts was improved through triangulation tests (Santos et al., 2020). Meanwhile, secondary data in the form of text contained in the OECD policy and the Tax Treaty of Indonesia and Malaysia were validated by tracing data sourced from their official websites.

Data were analyzed using an interactive analysis model in the form of data analysis, which occurred simultaneously with data collection (Miles et al., 2019). Considering that qualitative research has the main character of the researcher as the research

instrument, discussions on research themes are colored by contemplation of the researcher's knowledge and experience (Cresswell & Poth, 2018).

3 Result and Discussion

3.1 Research Participants' Views

The informants involved in this study are academics and tax practitioners with knowledge and experience in the field of cross-jurisdictional digital transactions. The interview manuscript is presented in chronological order of the informants' views as follows:

Mrs. Academician (July 29th, 2024)

Views on e-commerce taxation policy

... We are not yet familiar with the e-commerce transaction model, so there is potential for income tax that has not been optimally explored. Tax treatment should be the same for traditional and e-commerce transactions.

OECD policy views on the application of the equality principle to tax treaties

... The current condition is that there is a struggle for taxation rights between the source country of income and the country of domicile, but the country of domicile is more dominant. The OECD plays a role in formulating fair policy.

Views on the relevance of the physical presence nexus

... Digital progress is undeniable, and determining tax subjects using physical presence criteria is no longer relevant. Thus, the concept of digital transaction taxation realizes certainty through equality and fairness policies between traditional transactions and e-commerce.

Mr. Practitioner (August 11th, 2024)

Views on e-commerce taxation policy

... Taxation of income tax becomes interesting to discuss from a cross-country perspective. Of course, with the same tax object, it will be "fought over" by the country of domicile and the country of source. The country of domicile has the right to the status of the company's establishment, whereas the country of source has the right to the income received or obtained from that country.

OECD policy views on the application of the equality principle to tax treaties

... In general, the OECD is of the view that the country where the income is generated is obliged to obtain the right to tax it. However, the OECD also emphasizes the importance of tax treaties between countries in supporting several aspects of tax collection, one of which is fairness.

Views on the relevance of the physical presence nexus

... It is necessary to regulate new policies so that there is legal certainty that can be the basis for the government to collect taxes on international trade in order to increase state revenues.

... Currently, physical presence is no longer relevant; clarity is needed on how much income a PE receives and how tax authorities can justify determining the income limits for determining a PE.

The views of the participants were then arranged into research themes to answer the research questions. The research themes are arranged into three categories: e-commerce taxation policy, OECD policy regarding the application of the equality principle in tax treaties, and the relevance of the physical presence nexus. The discussion of the text on Indonesian and Malaysian Tax Treaties is complemented by the contemplation of the researcher's knowledge and experience as the main characteristics of qualitative research.

3.2 Discussion

E-Commerce Taxation Policy. The Organisation for Economic Co-operation and Development (OECD) is an institution with the main task and function of formulating biased policies. The views of academic and practitioner informants regarding OECD policies emphasize the paradigm of tax authorities and taxpayers who still use traditional patterns.

Mrs. Academician described the unfamiliarity of e-commerce-based transactions at the policy level. These transactions are common; however, the taxation pattern still uses a traditional transaction pattern. Furthermore, Informant Mr. Practitioner saw from the perspective of taxation policy on e-commerce-based transactions that taxation rights are still being fought over between the source country and the country of domicile. In terms of the subject and object of tax, Mrs. Academician and Mr. Practitioner have the same view that traditional and e-commerce-based transactions are the same.

Using OECD content analysis, which emphasizes the challenges and opportunities of e-commerce-based transactions, OECD's proposals are outlined in the OECD Pillar 1 policy (OECD, 2015; Suroño & Apriliasari, 2022). The tax subject is emphasized in determining the PE before determining the taxation rights of its tax object. Content analysis in the Tax Treaty of Indonesia and Malaysia in Article 4 concerning Resident Taxpayers states that the determination of a Resident Taxpayer is more about individual tax (a person).

Policy Regarding the Application of the Equality Principle in Tax Treaties. The main aspect of the principle of equality is the fulfillment of equality between the taxation rights of the country of the source of income and the country of domicile. Reflecting on the dimensions of tax compliance formation, which consist of two dimensions of trust and power (Batrancea et al., 2019; Kirchler et al., 2008; Kogler et

al., 2023; Ritsatos, 2014), this is also relevant for the compliance of multinational corporate entities. It is necessary to adjust the dimensions of compliance to suit the characteristics of taxpayers (Darmayasa, 2017; Darmayasa et al., 2017; Darmayasa et al., 2021; Darmayasa et al., 2022; Sudarma & Darmayasa, 2021) and the legal norms of other contracting states. Tax treaties are special policies that are the main reference and superior to a country's domestic policies (Hiariej, 2021; Irfani, 2020).

The academicians' view is that taxation rights in the country of domicile are more dominant, considering that the dominant tax treaty model is the OECD model. The view of the practitioner comes from the authority of the OECD, which only provides international guidance on a policy that applies across jurisdictions. The Practitioner provides an ideal figure of the country as the source of income that obtains the primary taxation rights. The views of academics and practitioners convey the importance of enforcing the principle of equality in tax treaty policies (Gangl & Torgler, 2020; Susilawati et al., 2021). The enforcement of the principle of equality through content analysis in the Tax Treaty of Indonesia and Malaysia in Article 5 regarding the determination of an entity to become a PE. Article 5 of the tax treaty states that the term permanent establishment means a fixed place of business. The main taxation rights are in the country of domicile, the principle of equality can be realized through ratification of the meaning of the nexus physical presence (Amoh et al., 2023; Darmayasa & Partika, 2024; Li, 2018; Ziemele et al., 2022).

Relevance of Nexus Physical Presence. The rapid development of cross-border digital transactions has high tax potential (Darmayasa, 2022; Darmayasa & Kumontoy, 2022; Partika et al., 2022). The foundation of policy formulation is the OECD's concern, which is compiled in various digital transaction policy proposals. The OECD guidelines are not mandatory; this is in accordance with the function and role of the OECD as an impartial policy-making institution.

The views of Academics and Practitioners regarding the current development of digital transactions as an inevitability, ideally become the basis for a fundamental and comprehensive policy review. Content analysis of the Tax Treaty of Indonesia and Malaysia should ideally be ratified using the OECD proposal as the basis for determining a PE through the Significance Economic Presence (SEP) or Digital Economic Presence (DEP) criteria. The ratification of SEP and DEP terminology considers the framework proposed by the OECD in anti-based erosion shifting (BEPS).

Corporate tax in Indonesia is currently 22%, and in Malaysia, it is 24%, both of which have high tax rates. The OECD proposal on Pillar 2 is an alternative solution to the Global Anti-Base Erosion (GloBE) policy. Implementation of the GloBE policy requires benefit simulation or even triggers the BEPS. This is a concern for tax authorities in Indonesia, Malaysia, and other countries that have not implemented the OECD Pillar 2 policy.

4 Conclusion

This study aims to design a digital-based transaction policy for Indonesia and Malaysia. The current policy proposed by the OECD through Pillar 1 and Pillar 2 is limited to

proposals that are alternatives for the authorities of each country. Through content analysis of the Tax Treaty, Indonesia and Malaysia require the ratification of articles that can realize the principle of equality.

Content analysis in the Tax Treaty of Indonesia and Malaysia in Article 5 regarding the determination of an entity to become a PE can be done by considering the application of the terminology SEP and DEP. Another alternative is to participate in every joint activity in an anti-based erosion shifting (BEPS) program. Another program is through the preparation of the implementation of the Pillar 2 policy in the form of GloBE, which is stated in the academic policy on the benefits of GloBE for Indonesia and Malaysia.

This research is limited to the concept of taxation of digital-based transactions across jurisdictions regulated by the Tax Treaty between Indonesia and Malaysia. A comprehensive study is needed in further research in the form of a simulation of the implementation of GloBE as a consideration for Indonesia and Malaysia before implementing the Pillar 2 policy to avoid disincentives.

Acknowledgment

The researchers would like to thank all the research participants and institutions that provided funding for their participation grant DIPA Politeknik Negeri Bali SP DIPA-023.18.2.677608/2024 *Revisi Ke 03 Tanggal 04 Maret 2024*.

References

- Amoh, J. K., Ofori-Boateng, K., Nsor-Ambala, R., & Bugri Anarfo, E. (2023). Tax efforts and tax evasion—economic development Nexus. Does institutional quality matter? *Cogent Economics and Finance*, 11(2). <https://doi.org/10.1080/23322039.2023.2243174>.
- Apriliasari, V. (2022). OECD/G20 two-pillar solution: Does it promote inter-nation equity? *Jurnal Pajak Indonesia (Indonesian Tax Review)*, 6(2), 342–356. <https://doi.org/10.31092/jpi.v6i2.1826>.
- Batrancea, L., Nichita, A., Olsen, J., Kogler, C., Kirchler, E., Hoelzl, E., Weiss, A., Torgler, B., Fookan, J., Fuller, J., Schaffner, M., Banuri, S., Hassanein, M., Alarcón-García, G., Aldemir, C., Apostol, O., Bank W. D., Batrancea, I., Belianin, A., Zukauskas, S. (2019). Trust and power as determinants of tax compliance across 44 nations. *Journal of Economic Psychology*, 74, 102191. <https://doi.org/10.1016/j.joep.2019.102191>.
- Cahyadini, A., Dewi, S., Sugiharti, D. K., & Muttaqin, Z. (2021). Direct tax for digital platform during the COVID-19 pandemic: Study in Indonesia. *Journal of Southwest Jiaotong University*, 56(2), 271–280. <https://doi.org/10.35741/issn.0258-2724.56.2.22>.
- Cahyadini, A., Hutagalung, J. I. G., & Muttaqin, Z. (2023). The urgency of reforming Indonesia's tax law in the face of economic digitalization. *Cogent Social Sciences*, 9(2), 2285242. <https://doi.org/10.1080/23311886.2023.2285242>.
- Cresswell, J. W., & Poth, C. N. (2018). *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (4th ed.). Sage Publications Inc. USA. <https://us.sagepub.com/en-us/nam/qualitative-inquiry-and-research-design/book246896>.

- Darmayasa, I. N. (2017). Yadnya sebagai pemaknaan lain atas nilai wajar harta amnesti pajak. *Jurnal Akuntansi Multiparadigma*, 8(1), 166–182. <https://doi.org/http://dx.doi.org/10.18202/jamal.2017.04.7046>.
- Darmayasa, I. N. (2022). The fundamental taxation design of digital transaction. *Proceedings of the International Conference on Applied Science and Technology on Social Science 2022 (ICAST-SS 2022)*, 524–529. https://doi.org/10.2991/978-2-494069-83-1_93.
- Darmayasa, I. N., Arsana, I. M. M., & Putrayasa, I. M. A. (2022). Reconstruction of the slippery slope framework tax compliance model. *ACRN Journal of Finance and Risk Perspectives*, 11, 19–32. <https://doi.org/https://doi.org/10.35944/jofrp.2022.11.1.002>.
- Darmayasa, I. N., & Kumontoy, M. (2022). Optimizing income tax and value added tax on e-commerce transaction. *Proceedings of the First Lekantara Annual Conference on Public Administration, Literature, Social Sciences, Humanities, and Education, LePALISSHE 2021, August 3, 2021*. <https://doi.org/10.4108/eai.3-8-2021.2315147>.
- Darmayasa, I. N., & Partika, I. D. M. (2024). Reconstruction concept of the meaning of permanent establishment physical presence for tax purposes. *Journal of Tax Reform*, 10(1), 38–50. <https://doi.org/https://doi.org/10.15826/jtr.2024.10.1.155>.
- Darmayasa, I. N., Sudarma, I. M., Achsin, M., & Mulawarman, A. D. (2017). Deconstruction of tax amnesty in based on Pancasila values: The case of Indonesia. *Accounting and Business Society*, 25(1), 61–70. <https://doi.org/https://doi.org/10.21776/ub.ijabs.2017.25.1.2>.
- Darmayasa, I. N., Utami, N. W. D. W., & Mandia, I. N. (2021). The embodiment of voluntary compliance through understanding of MSMEs tax compliance perception. *Jurnal Akuntansi Dan Pendidikan*, 10(1), 63–72. <https://doi.org/10.25273/jap.v10i1.7129>.
- Gangl, K., & Torgler, B. (2020). How to achieve tax compliance by the wealthy: A review of the literature and agenda for policy. *Social Issues and Policy Review*, 14(1), 108–151. <https://doi.org/10.1111/sipr.12065>.
- Geringer, S. (2021). National digital taxes—lessons from Europe. *South African Journal of Accounting Research*, 35(1), 1–19. <https://doi.org/10.1080/10291954.2020.1727083>.
- Hiariej, E. O. S. (2021). Asas Lex Specialis Systematis dan hukum pidana pajak. *Jurnal Penelitian Hukum De Jure*, 21(1), 1–12. <https://doi.org/10.30641/dejure.2021.v21.1-12>.
- Irfani, N. (2020). Asas Lex Superior, Lex Specialis, dan Lex Posterior: Pemaknaan, problematika, dan penggunaannya dalam penalaran dan argumentasi hukum. *Legislasi Indonesia*, 16(3), 305–325.
- Kirchler, E., Hoelzl, E., & Wahl, I. (2008). Enforced versus voluntary tax compliance: The “slippery slope” framework. *Journal of Economic Psychology*, 29, 210–225. <https://doi.org/doi:10.1016/j.joep.2007.05.004>.
- Kogler, C., Olsen, J., Kirchler, E., Batrancea, L. M., & Nichita, A. (2023). Perceptions of trust and power are associated with tax compliance: A cross-cultural study. *Economic and Political Studies*, 11(3), 365–381. <https://doi.org/10.1080/20954816.2022.2130501>.
- Li, J. (2018). Protecting the tax base in a digital economy. *Osgoode CLPE Research Paper Series*, 13(17), 30. SSRN: <https://ssrn.com/abstract=3164995>.
- Manioudis, M., & Milonakis, D. (2021). Smith’s wealth of nations and the economic past: Setting the scene for economic history? *European Journal of the History of Economic Thought*, 28(1), 142–163. <https://doi.org/10.1080/09672567.2020.1776355>.
- Mann, H. (2023). The expanding universe of international tax disputes: A principled analysis of the OECD international tax dispute settlement proposals. *Asia Pacific Law Review*, 31(1),

- 268–283. <https://doi.org/10.1080/10192557.2022.2102593>.
- Miles, M. B., Huberman, A. M., & Saldana, J. (2019). *Qualitative data analysis: A methods sourcebook*. Sage Publications Inc. USA. <https://us.sagepub.com/en-us/nam/qualitative-data-analysis/book246128>.
- Murthy, K. V. B., & Bhasin, N. (2015). The impact of bilateral tax treaties: A multi-country analysis of FDI inflows into India. *Journal of International Trade and Economic Development*, 24(6), 751–766. <https://doi.org/10.1080/09638199.2014.960442>.
- Oberoi, M., & De, D. (2021). Equalisation levy in India: An exploratory study. *IJRAR*, 8(2), 815–842.
- OECD. (2015). *Addressing The Tax Challenges of The Digital Economy, Action 1 2015 Final Report*. OECD Publishing. <https://doi.org/https://doi.org/10.1787/9789264241046-en>.
- OECD. (2019). *Addressing the tax challenges of the digitalisation of the economy*. Base Erosion and Profit Shifting Project Public. <https://www.oecd.org/tax/beps/public-consultation-document-addressing-the-tax-challenges-of-the-digitalisation-of-the-economy.pdf>.
- Partika, I. D. M., Wirayana, I. M. A., & Darmayasa, I. N. (2022). The digitization of voluntary disclosure program. *Proceedings of the International Conference on Applied Science and Technology on Social Science 2022 (ICAST-SS 2022)*, 186–191. https://doi.org/10.2991/978-2-494069-83-1_34.
- Polezharova, L. V., & Krasnobaeva, A. M. (2020). E-commerce taxation in Russia: Problems and approaches. *Journal of Tax Reform*, 6(2), 104–123. <https://doi.org/10.15826/jtr.2020.6.2.077>.
- Ponomareva, K. (2022). Tax challenges arising from the digitalisation of the economy: The development of the OECD project and possible implementation in Russia. *BRICS Law Journal*, 9(4), 41–63. <https://doi.org/10.21684/2412-2343-2022-9-4-41-63>.
- Rahim, E. (2018). Marx—from Hegel and Feuerbach to Adam Smith: A new synthesis. *International Critical Thought*, 8(2), 193–209. <https://doi.org/10.1080/21598282.2018.1478235>.
- Rinaningsih. (2020). Asas “dapat dilaksanakan” dalam peraturan perpajakan. *Scientax*, 1(2), 184–202. <https://doi.org/10.52869/st.v1i2.30>.
- Ritsatos, T. (2014). Tax evasion and compliance; from the neo classical paradigm to behavioural economics, a review. *Journal of Accounting & Organizational Change*, 10(2), 244–262. <https://doi.org/10.1108/JAOC-07-2012-0059>.
- Santos, K. D. S., Ribeiro, M. C., Queiroga, D. E. U. D., Silva, I. A. P. D., & Ferreira, S. M. S. (2020). The use of multiple triangulations as a validation strategy in a qualitative study. *Ciencia e Saude Coletiva*, 25(2), 655–664. <https://doi.org/10.1590/1413-81232020252.12302018>.
- Sudarma, M., & Darmayasa, I. N. (2021). Historisitas filosofis konsep pemajakan dividen pada undang-undang cipta kerja. *Jurnal Akuntansi Multiparadigma*, 12(2), 312–328. <https://doi.org/10.21776/ub.jamal.2021.12.2.18>.
- Surono, S., & Apriliasari, V. (2022). Pengaruh pillar 1 OECD (unified approach) terhadap pemajakan digital di Indonesia. *Jurnal Pajak Indonesia (Indonesian Tax Review)*, 6(2S), 462–471. <https://doi.org/10.31092/jpi.v6i2s.1868>.
- Susilawati, N., & Rahayu, N. (2021). A systematic literature review for distinguishing tax terms: Equality, equity, justice, and fairness. *Journal of Economics and Behavioral Studies*, 13(6 (J)), 19-39.

- Turina, A. (2020). The progressive policy shift in the debate on the international tax challenges of the digital economy: A “pretext” for overhaul of the international tax regime? *Computer Law and Security Review*, 36(April 2020), 105382. <https://doi.org/10.1016/j.clsr.2019.105382>.
- Ziemele, S., Juruss, M., Hudenko, J., & Smite-Roke, B. (2022). The tax nexus in the digital economy. *Reliability and Statistics in Transportation and Communication. RelStat 2021. Lecture Notes in Networks and Systems*, 410, 501–512. https://doi.org/https://doi.org/10.1007/978-3-030-96196-1_46.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

